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MINTZ LEVIN
PATENT DOCKET

In re Patent No. 7,765,143	:	DECISION ON
Robert A. West	:	PATENT TERM ADJUSTMENT
Issue Date: July 27, 2010	:	AND NOTICE OF INTENT
Application No. 10/701,235	:	TO ISSUE
Filed: November 4, 2003	:	CERTIFICATE OF
Attorney Docket No. 39700-522C02US	:	CORRECTION

Done By DJG
☐ Data Entry
☐ Docket Entry
☐ Docket Cross Off
☐ Previously Entered
☐ No Docketing Req
☐ ELITE

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT", filed July 28, 2010. Patentee requests that
the patent term adjustment indicated on the patent be corrected
from one thousand four hundred sixty-six (1466) days to one
thousand, four hundred ninety-six (1496) days.

The petition is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be
corrected by issuance of a certificate of correction showing a
revised Patent Term Adjustment of **one thousand four hundred
fifty-eight (1458) days.**

On July 27, 2010, the above-identified application matured into
U.S. Patent No. 7,765,143. Patentee timely filed an application
for patent term adjustment under 37 CFR 1.705(d) on July 28,
2010. Patentee asserts that he should not have been assessed
applicant delay of sixty-one (61) days for the submission of a
Rule 312 Amendment on May 28, 2010, after the Notice of Allowance
was mailed on May 18, 2010. Rather, Patentee asserts that he
should have only been assessed applicant delay of thirty-one (31)
days.

37 CFR 1.704(c)(10) states that applicant delay shall be assessed "beginning on the date the...paper was filed and ending on the mailing date of the Office action or notice in response to the...paper". Here, Applicant filed the Rule 312 Amendment on May 28, 2010, and the Office mailed a Supplemental Notice of Allowability on June 28, 2010. Accordingly, Applicant should have been accorded 32 days of delay for the filing of the Rule 312 Amendment, not 61 days as reflected in PAIR, and not 31 days as asserted by Patentee.

Moreover, the Office should have assessed additional Applicant delay for another instance of delay under 37 CFR 1.704(c)(10). The Office earlier mailed a Notice of Allowance on February 5, 2010. In reply, Applicant filed an RCE on April 12, 2010, to which the Office responded by mailing the second Notice of Allowance on May 18, 2010. Accordingly, 37 days of Applicant delay should have been assessed pursuant to 37 CFR 1.704(c)(10).

In view thereof, the correct determination of PTA at the time of issuance is one thousand four hundred ninety-five (1495) days (1735 days of PTO delay, reduced by 277 (208+32+37) days of applicant delay).

Receipt of the $200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one thousand four hundred fifty-eight (1458)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight
Director
Office of Petitions

Enc: draft certificate of correction

UNITED STATES PATENT AND TRADEMARK OFFICE
DRAFT CERTIFICATE OF CORRECTION

PATENT   : 7,765,143 B2

DATED   : July 27, 2010

INVENTOR(S) : Robert A West

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1466 days.

Delete the phrase "by 1466 days" and insert – by 1458 days--